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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992

Broadcast Signal Carriage Issues

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) MM Docket No. 92-259
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TO: The Commission

COMMENTS

GRANITE BROADCASTING
CORPORATION

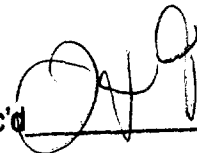
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SUMMARY

The Notice of Proposed Rule Making ("Notice") in the instant proceeding seeks comments on regulations to implement the mandatory carriage and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). A primary goal of the Cable Act of 1992 is to protect and to promote the value of "localism." Granite Broadcasting Corporation ("Granite") is concerned that this goal may be frustrated by apparent (and unintended) gaps in the 1992 Act's mandatory carriage provisions and therefore urges the Federal Communications Commission ("Commission") to adopt measures that are necessary to assure that Congress' emphasis on the value of localism is not frustrated.

In enacting the new mandatory carriage rights for commercial television stations, Congress defined the area within which a station would be entitled to local carriage by reference to current Arbitron Area of Dominant Influence ("ADI") markets. Unfortunately, the definition fails to take into account situations where the ADI that includes a television station's community of license is different than the ADI to which Arbitron assigns the station. In such situations, relying on the ADI to which a station is assigned by Arbitron to define the station's must carry television market would mean that the station's community of license (and the county where it is located) will be excluded. Such a result would be totally inconsistent with the 1992 Act's emphasis on localism.

Granite's Station KNTV is the only VHF station licensed to San Jose, California and is the community's only network affiliate. San Jose is located in Santa Clara County, which is in the San Francisco-Oakland-San Jose ADI. The Station, however, is assigned by Arbitron to the Salinas-Monterey ADI which means that KNTV's "television market" for must carry purposes would be the Salinas-Monterey ADI. Assignment of the Station solely to the Salinas-Monterey ADI, however, will initially prevent KNTV from being classified as a "local" station on San Jose and Santa Clara County cable systems since both are located in the San Francisco-Oakland-San Jose ADI. Such a result would deny residents of San Jose and Santa Clara County cable access to one of their most important sources of local news and information.

Granite strongly urges the Commission to include Santa Clara County in KNTV's must carry television market through the adoption of general rules in the instant proceeding. Given a licensee's obligation to provide programming that serves the needs and interests of its community of license, it is difficult to envision any situation in which a station's community of license (and its county of license, i.e., where its community of license is located) should not be included in its television market for must carry purposes. The Commission should adopt a general rule that would automatically include a television station's county of license in its must carry market whenever its community of license lies outside its assigned ADI. Although there may be a limited number of situations where it would be

appropriate to include only portions of a station's county of license in a station's must carry market, exclusion of such portions of a county can be handled under the Commission procedures for adjusting television markets on a case-by-case basis.

If the Commission decides not to adopt a general rule, it should incorporate special provisions as part of its procedures for expeditiously adjusting individual stations' television markets on a case-by-case basis. Specifically, the Commission should adopt a "presumption" that where a station seeks to include its county of license in its television market, the inclusion of such county will be presumed to further the value of localism. Further, a station should be permitted to include its county of license in its television market upon the filing of a written request with the Commission and service of copies of such request on all affected cable systems.

Under Section 614(b)(2) of the 1992 Act, Cable operators have the discretion to decide which local television station signals to carry when the number of local stations entitled to mandatory carriage exceeds the number of signals that the cable system is required to devote to mandatory carriage of local signals. If a cable operator elects to carry the signal of a network affiliate and there is more than one affiliate of the same network entitled to mandatory carriage, the cable operator must carry the signal of the affiliate located closest to the cable system. Congress reasoned that the television station

located closest to the cable system is the most likely to be responsive to the needs and interests of the cable system's subscribers.

Under Section 614(b)(5) of the 1992 Act, cable systems also are not required to carry signals of television stations affiliated with the same network, or which substantially duplicate each other. In enacting this general non-duplication provision, Congress was silent with respect to whether a cable operator must carry the signal of the station located closest to the cable system. Allowing cable systems to carry the signal of a "distant" network affiliate while dropping the signal of the "local" affiliate of the same network would clearly be inconsistent with Section 614(b)(2) of the 1992 Act and contrary to its emphasis on the value of localism. To ensure that Congress' goal of protecting and promoting the value of localism will be achieved, the Commission should require cable operators choosing between the signals of local television stations affiliated with the same network to carry the signal of the station whose city of license is closest to the cable system, i.e., the most "local" station.

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TO: The Commission

COMMENTS OF GRANITE BROADCASTING CORPORATION

Granite Broadcasting Corporation and its wholly-owned broadcasting subsidiaries ("Granite")^{1/}, by their attorneys, hereby submit their comments in response to the Notice of Proposed Rule Making adopted by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned rule making proceeding.^{2/} The Notice requests comments on regulations proposed by the Commission that will implement the mandatory carriage and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992

^{1/} Granite Broadcasting Corporation, the largest minority controlled television group owner in the U.S., is the licensee of Station WEEK-TV, Peoria, Illinois. Its wholly-owned broadcast subsidiaries include: WPTA-TV, Inc., licensee of Station WPTA-TV, Ft. Wayne, Indiana; RJR Communications, Inc., licensee of Station KBJR-TV, Superior, Wisconsin; and KNTV, Inc, licensee of Station KNTV, San Jose, California.

^{2/} Notice of Proposed Rule Making, (FCC 92-499) _____ FCC Rcd _____ (released November 19, 1992) (hereinafter "Notice").

("Cable Act of 1992" or "1992 Act").^{3/} As set forth below, Granite's comments are focused on measures the Commission should adopt in connection with its implementation of the mandatory carriage provisions of the 1992 Act that are necessary to assure that Congress' goals of protecting and promoting the value of localism will not be frustrated.

I. INTRODUCTION

A primary purpose of the Cable Act of 1992 is to protect and to promote the value of "localism." Thus, Congress made express findings that:

The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.

A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

Broadcast television stations continue to be an important source of local news and public

^{3/} Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 102 Stat. ____ (1992). The 1992 Act includes provisions that require a commercial broadcast television station to elect between (1) requiring mandatory carriage of its signal on local cable systems and (2) asserting its right to require local cable systems to obtain its consent to retransmission of its signals.

affairs programming and other local broadcast services critical to an informed electorate.

1992 Act, §§2(a)(9), (10) and (11).

The value of localism has long been a guiding principal in the Commission's discharge of its licensing authority under the Communications Act of 1934, as amended. Thus, the Commission requires television licensees to present programming that is responsive to the particular needs and interests of residents of its community of license and the surrounding areas. See, e.g., RKO General, Inc., 2 FCC Rcd 1081 (1986). Consistent with this obligation, the comparative criteria applied by the Commission in choosing between competing applicants for new broadcast stations emphasizes attributes that the Commission believes will enable a licensee to best serve the particular needs and interests of the community where the new station will be located. See, e.g., Policy Statement on Comparative Broadcasting Hearings, 1 F.C.C.2d 393 (1965).

Granite is a group broadcasting company founded in 1988 to acquire and operate network-affiliated television stations. The company's operating strategy is and has been based on a commitment to maintain and strengthen each of its station's local news broadcasts and to take advantage of opportunities presented by local community events and special local programming to attract viewers and advertisers. Thus, Granite strongly views its commitment to the value of localism as good business practice

and a key to the financial success of its stations, rather than solely required to satisfy its regulatory obligations.^{4/}

Granite is concerned that the Cable Act of 1992's goals of protecting and promoting localism may be frustrated by apparent (and unintended) gaps in its mandatory carriage provisions. Specifically, in directing the Commission to use the Arbitron Area of Dominant Influence ("ADI") designations in defining "local" television markets for must carry purposes (i.e., where a station would have must carry rights), in certain markets Congress created the anomalous situation in which a television station's city of license will initially be excluded from its must carry television market. In addition, in drafting Section 614(b)(5) of the 1992 Act, which relieves cable operators of the obligation to carry the signals of the affiliates of the same network or of television stations that substantially duplicate each other, Congress neglected to require cable operators to carry the signal of the station that was located closest to the cable system, i.e., that was most "local."^{5/}

As more fully set forth below, Granite urges the FCC to adopt measures in this proceeding to address these matters in

^{4/} WPTA-TV and WEEK-TV are the leading news stations in their respective markets and, Granite stations WPTA-TV, WEEK-TV, and KBJR-TV produce more hours of local news programming than their competitors. KNTV attracts more aggregate households viewing weekday local news broadcasts than any other station licensed to San Jose.

^{5/} Unless otherwise indicated, all references to "television stations" in these comments shall refer to commercial broadcast television stations.

order to assure that the statutory goals and legislative intent of protecting and promoting the value of localism are not frustrated.

II. THE COMMISSION SHOULD ACT TO ASSURE THAT THE COUNTY IN WHICH A TELEVISION STATION'S CITY OF LICENSE IS LOCATED IS INCLUDED IN ITS MUST CARRY "TELEVISION MARKET"

In implementing the new mandatory carriage rights of television stations under the 1992 Act, Congress defined the area within which a station will be entitled to such rights by reference to current Arbitron ADI markets. Although it was clearly Congress's intent that a television station's "local" market be defined in a manner consistent with the 1992 Act's emphasis on the value of localism,^{6/} its reliance on Arbitron's ADI market designations could have exactly the opposite result for certain television stations. For example, because Station KNTV(TV) is licensed to San Jose, California, but is assigned by Arbitron to the Salinas-Monterey ADI, the station would not have must carry rights in San Jose, its city of license.

A. Market Definition - The ADI Dilemma.

Section 614(h)(1)(A) of the Cable Act of 1992 provides that the signal of a television station is "local" for must carry purposes if the station is within the same "television market" as

^{6/} See H.R. Rep. No. 102-628, 102d Cong., 2d Sess., at 97 (1992) ("House Report"). The House Report states that the "Committee believes that ADI lines are the most widely accepted definition of a television market and more accurately delineate the area in which a station provides local service than any arbitrary mileage-based definition." Id.

the cable system.^{7/} In turn, Section 614(h)(1)(C) of the 1992 Act states that for purposes of the mandatory carriage provisions a particular television station's "television market" shall be determined in the manner provided in Section 73.3555(d)(3)(i) of the Commission's rules. Section 73.3555(d)(3)(i), which sets forth the manner in which "national audience reach" shall be determined for purposes of the Commission's multiple ownership rules refers to the Arbitron ADI.^{8/} See 47 C.F.R.

§73.3555(d)(3)(i). Since in most circumstances a television station is licensed to a community that is physically located in the station's assigned ADI, it would appear that its ADI will

^{7/} The 1992 Act gives the Commission the authority to include additional communities within a television market or to exclude communities from such station's television market to better effectuate the purposes of the "must carry" provisions. In considering written requests to include or exclude communities from a particular station's market, the Cable Act directs the FCC to "afford particular attention to the value of localism" by taking into account four enumerated factors. See Section 614(h)(1)(C); Notice at ¶20. The 1992 Act also directs the Commission to implement procedures for handling requests for modifying a station's television market on an expedited basis.

^{8/} The Notice states as follows:

The ADI . . . is a geographic survey area based on measurable patterns of television viewing. Each county in the contiguous United States is assigned exclusively to one ADI. The assignment of a county to an ADI is based on the shares of the county's total estimated television viewing hours. The market whose home stations achieve the largest total share (percentage) of viewing is determined to be the "dominant influence" in that county, and that county is assigned to that market's ADI.

Notice at ¶18.

generally reflect its "local" market, i.e., where its primary viewership is located.^{9/}

In deciding to use Arbitron ADIs for purposes of defining must carry television markets, it appears that Congress did not contemplate situations where a television station's community of license is located in a different ADI than the ADI to which the station is assigned. Relying solely on a station's assigned ADI as the starting point for defining its must carry television market will mean that in all situations where a station's assigned ADI does not include its community of license, the community of license (and the county where it is located) will be initially excluded from the station's must carry market. In other words, initially such stations would not have must carry rights in the very communities that they are obligated to serve. Excluding a station's community of license from its television market for must carry purposes would be contrary to the principal of localism and to the Cable Act of 1992's emphasis on localism.^{10/}

^{9/} See House Report at 97. The House Report indicates that as a general rule a station's assigned ADI was selected as the station's must carry television market because it would further the goals of promoting the value of localism. See *id.*

^{10/} Congress's intent to promote the value of localism is reflected in the mandatory carriage provisions of the 1992 Act. Specifically, in giving the Commission the authority to include additional communities within, or to exclude communities from, a station's television market, the Act expressly directs the Commission to "afford particular attention to the value of localism." 1992 Act, §614(h)(1)(C)(i).

B. KNTV(TV), San Jose, California.

KNTV is the only VHF station licensed to San Jose and is the community's only network affiliate. The primary focus of KNTV's local service has been and continues to be San Jose and the surrounding areas as reflected in the Station's "San Jose Newschannel" moniker. KNTV produces seventeen hours of long form newscasts each week, primarily centered on news of San Jose and Santa Clara County. The Station, for example, is planning to broadcast the mayor's San Jose State of the City address live within its 6:00 pm newscast on January 27, 1993. In addition, in recent years the Station has produced and broadcast a wide range of prime time special programs about such important San Jose events as the opening of the new wing of the local art museum, the opening of the new Children's Discovery Museum, the opening night of the new Fairmont Hotel in the city's downtown redevelopment core, the downtown Christmas Parade as well as annual programs honoring outstanding local Hispanic citizens, outstanding contributions by disabled citizens and an annual local "Volunteer-a-Thon" that annually raises more than one million hours of donated volunteer time for San Jose area charities. Thus, the importance of KNTV as a source of news, public affairs and information to residents of San Jose and the surrounding areas of Santa Clara County is clearly evident.

Given KNTV's strong local service to San Jose and Santa Clara county, at a minimum, KNTV's must carry television market should include Santa Clara County. Because of Arbitron's

assignment of KNTV to the Salinas-Monterey ADI, however, the Station's must carry rights there are in question. San Jose, California, Station KNTV's community of license, is located in Santa Clara County, which is assigned by Arbitron to the San Francisco-Oakland-San Jose ADI. Since the 1950s, however, the Station has been assigned by Arbitron to the Salinas-Monterey ADI (which does not include Santa Clara County). It appears that Arbitron's long standing assignment of KNTV to the Salinas-Monterey ADI would mean that the Station's "television market" would be the Salinas-Monterey ADI.^{11/} Assignment of the

^{11/} Granite believes that to the extent that ADIs are relevant for purposes of defining a station's must carry television markets, it is appropriate to treat KNTV consistent with Arbitron's assignment of the station to the Salinas-Monterey ADI, rather than to the San Francisco-Oakland-San Jose ADI. Several factors including Arbitron's long-standing designation of KNTV to the Salinas-Monterey ADI, the fact that the Station is the sole ABC affiliate assigned by Arbitron to that ADI, and the Station's current and historical cable carriage in the ADI, strongly support designating the Salinas-Monterey ADI as the Station's "television market" for must carry purposes. In fact, the Commission has previously recognized the Station's orientation to the Salinas-Monterey ADI market. See, e.g., Ralph C. Wilson Industries, Inc., 91 F.C.C.2d 127, aff'd., 91 F.C.C.2d 139 (1982); American Broadcasting Companies, Inc., 77 F.C.C.2d 136 (1980).

Viewership in the Salinas-Monterey ADI supports Arbitron's continued assignment of KNTV to the ADI. KNTV is currently (and has been historically) carried on all cable systems serving Santa Clara County and the Salinas-Monterey ADI. Since the former must carry rules were invalidated, KNTV has achieved only scattered carriage on the remaining counties in the San Francisco-Oakland-San Jose ADI. KNTV is the second most viewed video source (television station or cable network) in the three county Salinas-Monterey ADI. In the 1992 Arbitron County Coverage Study, KNTV received 13% of total cable and non-cable viewing in Monterey County, the most populous county in the ADI. The station tied with KMST, the CBS affiliate in Monterey, for second
(continued...)

Station solely to the Salinas-Monterey ADI, however, would exclude KNTV from being classified as a "local" station on San Jose and Santa Clara County cable systems since both are located in the San Francisco-Oakland-San Jose ADI. Such a result would obviously frustrate Congress' desire to promote localism and would potentially deprive residents of San Jose and Santa Clara County cable access to one of their most important sources of local news and information.^{12/}

^{11/} (...continued)
in total viewing. By contrast, KGO, the ABC affiliate licensed to serve San Francisco was responsible for 2% of total viewing in the same county (both KNTV and KGO are carried on all the cable systems serving the ADI). The figures for KNTV and KGO in the other two counties in the ADI are similar.

KNTV's signal coverage also supports its assignment to the Salinas-Monterey ADI. The Station's transmitter is located substantially further south of San Francisco than any other of the television stations licensed to serve San Jose and as a result KNTV's service contours have a substantially more southern orientation as compared with the other San Jose stations. In fact, KNTV's service contours are substantially similar to one of the station's licensed to serve Salinas which is located in the Salinas-Monterey ADI.

^{12/} In requesting comments on updating the list of the top 100 markets set forth in Section 76.51 of its rules and noting that there were differences in its original list and Arbitron's ADI list at that time, the Commission stated:

. . . while Arbitron continues to designate the top ranked market New York, it lists stations licensed to each of the following communities within that market: New York, New York; Bridgeport, Connecticut; Newark, New Jersey; Patachogue-Hempstead, New York; Riverhead, New York; Garden City, New York; Montclair, New Jersey; Linden-Newark, New Jersey; Poughkeepsie, New York, Secaucus, New Jersey; and Paterson, New Jersey.

Notice at 12, f.n. 26. Because television stations licensed to these communities are assigned by Arbitron to the New York ADI,
(continued...)

C. The Commission's Rules Should Provide For The Inclusion Of A Station's County of License In A Station's Television Market.

Given a licensee's obligation to provide programming that serves the needs and interests of its community of license, it is difficult to envision any situations in which a station's community of license (and in most cases its county of license, i.e., where its community of license is located) should not be included in its television market for must carry purposes. Granite requests the Commission to include Santa Clara County in KNTV's must carry television market in the instant rule making proceeding. Specifically, Granite urges the Commission in this proceeding through an appropriate modification of its rules to address situations where a television station's community of license is located outside of its assigned ADI market. Such a rule would provide that a station's county of license (the county in which the station's community of license is located) would as an initial matter be automatically added to a station's assigned ADI market for purposes of its must carry television market

12/ (...continued)
sole reliance on assigned ADIs to define must carry markets would also result in the stations' communities of license being excluded from their must carry markets. While recognizing incongruities between Arbitron's ADI assignments and these stations' communities of license, the Notice fails to recognize the potential implications of such incongruities on the application of the new mandatory carriage provisions of the 1992 Act.

whenever a station's community of license lies outside its assigned ADI.^{13/}

As previously mentioned, there are not likely to be any situations where a television station's community of license should not be a part of a station's must carry television market. Moreover, Granite believes that in essentially every case where a station's community of license lies outside of its assigned ADI market such a station will be providing service not only to its community of license, but also to the areas surrounding such community. For example, Station KNTV places a Grade A or better signal over all of Santa Clara County, is legally obligated to serve the needs and interests of the San Jose market, and provides substantial news and public affairs coverage of the county. Accordingly, Granite believes that it is appropriate for the Commission to modify its rules in this proceeding to provide for the automatic addition of a station's county of license, rather than only its community of license, in situations where the station's community of license is outside of its assigned ADI market.^{14/}

^{13/} It would be an unnecessary and imprudent expenditure of resources for the Commission to deal with all such situations on a case-by-case basis. The adoption of a broader approach would have the public interest benefit of conserving Commission resources by eliminating or minimizing the administrative resources required to handle requests to include a station's county of license in its must carry television market.

^{14/} In promulgating rules to implement the new must carry requirements, the Commission could address KNTV's plight through its rule making authority by simply recognizing the uniqueness of
(continued...)

Granite recognizes that there may be a few situations where it might be appropriate to only include in a must carry television market a station's community of license and not the other portions of its county of license. For example, there may be situations where a station's community of license was located at the border of a county elongated in shape and the station's signal might not reach significant portions of the county. Such situations, however, clearly will be the exception rather than the rule. Because of the requirement that a station provide a city grade signal over a station's entire community of license, in most situations a station will be providing significant coverage to its county of license.

Granite submits that in situations where a station is not providing significant coverage to portions of its county of license, such portions of the county could be excluded from the station's must carry television market utilizing the Commission's case-by-case procedures for modifying an individual station's market. Because there will be far more situations where a station's county of license should be included in the station's television market than situations where portions of the county should be excluded, it is appropriate to adopt a general rule that provides for the exclusion of portions of a station's county

14/ (...continued)

KNTV's situation as departing from the general definition and designating KNTV's television market as including Santa Clara County. This narrowly tailored approach would achieve the desired result without impact on other markets or stations.

of license on a case-by-case, rather than the addition of portions of a station's county of license on a case-by-case basis. Accordingly, adopting a rule that provides for automatic inclusion of a station's county of license with case-by-case exclusion will best serve the policy objectives behind the must carry rule and the public interest.^{15/}

D. Alternatively, The FCC Should Streamline The Special Procedures For Adjusting Television Markets.

If the Commission decides not to modify its general rules in this proceeding to include a station's county of license in the station's local market, at a minimum, it should

^{15/} Without modifications to the FCC's general rules providing for the inclusion of a station's county of license in its television market, stations whose cities of license are located outside their assigned ADIs will potentially face the risk of not being carried on cable systems serving the stations' counties of license. Modifications to the general rules are therefore required to assure that viewer in these markets will have cable access to stations licensed to serve their communities.

All television stations will be required to elect between asserting the right to mandatory carriage on local cable systems and the right to require cable systems to obtain the stations' retransmission consent. Although the retransmission consent provisions of the 1992 Act will not become effective until October 6, 1993, it appears that stations will be required to make their initial elections well in advance of such date. In order for cable systems and television stations to be able to make rationale decisions regarding the retransmission consent election (which generally must be made on a county-by-county basis), at a minimum, each station needs to know as soon as possible the communities where it will be entitled to mandatory carriage. The adoption of rule modifications in the instant rule making proceeding to the FCC's general rules to reflect market realities with respect to the borders of a television station's local market are necessary to provide television stations and cable operators with the required certainty regarding a station's must carry market so that the stations can make timely rational retransmission consent elections.

incorporate special procedures into its rules for expeditiously adjusting individual stations' television markets on a case-by-case basis. Such special procedures would include a "presumption" that the inclusion of a station's county of license in its television market furthers the value of localism.^{16/} In addition, abbreviated and expedited procedures for the inclusion of a station's county of license in its television market would be included in the procedures for handling an individual station's request to modify its must carry television market. Specifically, a station would be allowed to include its county of license in its television market by filing at any time an appropriate written request with the Commission. The inclusion of the county of license in the station's market would become effective upon the service of copies of such request on all affected cable systems.^{17/}

^{16/} As noted above, there may be a limited number of situations where a television station does not provide coverage to all of its county of license. To address such situations, the Commission could condition the availability of the presumption that inclusion of a station's county of license in its television market furthered the value of localism and the expedited procedures for such inclusion upon a showing by the requesting station that it places at least a Grade B signal over the entire county. In all circumstances, however, the special procedures should be available for a station to add its city of license (and not the remaining areas of the county in which it is located) to its must carry television market.

^{17/} As discussed above, in most situations it will be appropriate to include a television station's county of license in its must carry market and, accordingly, a television station should be able as an initial matter to utilize these expedited procedures to include its county of license in its television market. Cable operators that believe that inclusion of a portion
(continued...)

Requiring the filing of individual requests to modify a television station's must carry television market in situations where a station's county of license is located outside of its assigned ADI will obviously be more time consuming and less efficient than the adoption of a general rule that provides for the automatic inclusion of a station's county of license whenever a station's city of license is located outside of its ADI market. In the absence of general rules, however, the adoption of special procedures to deal with such modifications to a station's television market, should be adopted because such procedures will require the expenditure of substantially fewer Commission resources than case-by-case consideration of such requests, and will serve the public interest.

**III. CABLE OPERATORS ELECTING NOT TO CARRY DUPLICATIVE SIGNALS
SHOULD BE REQUIRED TO CARRY THE SIGNAL OF THE STATION
LOCATED CLOSEST TO THE CABLE SYSTEM**

There are two situations under the Cable Act of 1992 where cable operators that otherwise would be required to carry the signals of local television stations have the discretion not to carry certain of the signals. First, when the number of television stations entitled to mandatory carriage on a cable system exceeds the number of signals that the cable system is required to devote to mandatory carriage of local signals, the

17/ (...continued)
of such county was not warranted, could utilize the normal procedures for adjusting an individual station's local market to request that such portion be excluded.

cable operator has the discretion to select which signals to carry. Congress provided, however, that if a cable operator elects to carry the signal of a network affiliate and there is more than one affiliate of the same network entitled to mandatory carriage, the cable operator must carry the signal of the affiliate (or the same network) located closest to the principal headend of the cable system.

Congress also afforded cable systems relief from being required to carry duplicative signals by affording cable systems the discretion not to carry signals of television stations affiliated with the same network, or which substantially duplicate each other. In light of the 1992 Act's emphasis on the value of localism and its requirement that cable systems with insufficient capacity that elect to carry a network affiliate carry the signal of the station located closest to the system's principal headend, Granite submits that Congress also intended to require cable systems electing not to carry duplicative signals to carry the signal of the station that is located closest to the cable system's principal headend. The 1992 Act's general non-duplication provision, however, is silent on this matter.

A. Insufficient Cable System Capacity.

Section 614(b)(2) of the Act provides that when the number of channels a cable system in a particular market is required to devote to carriage of the signals of local commercial television stations is less than the total number of "local" stations in the television market that the cable system would

otherwise be required to carry, the cable system may select which of the "local" stations to carry. Section 614(b)(2), however, further provides that if a cable operator decides to carry an affiliate of a particular network, it must carry the affiliate (of that network) whose city of license is closest to the principal headend of the cable system.^{18/}

Thus, if a cable system in a particular television market in which there are two or more "local" television stations that are affiliated with the same network has insufficient system capacity to carry the full number of must carry signals, the cable operator may elect not to carry the signal of any of the affiliates of that network. However, if the cable operator decides to carry the signal of an affiliate of the network, it must carry the signal of the station whose city of license (as compared with the other affiliates) is located closest to the principal headend of the cable system. In other words, where there are more than one affiliate of the same network that are

^{18/} Based on the Senate Report submitted in connection with S. 12, the FCC tentatively concluded that cable operators may use local retransmission consent channels to meet the Section 614 signal carriage requirements. See Notice at 27; see also S. Rep. 102-92, 102d Cong., 1st Sess., at 37-38 (1991) ("Senate Report"). For example, if a cable system is required to carry three (3) local signals and it carries one local signal pursuant to retransmission consent, the retransmission consent signal is counted in determining whether the cable system has fulfilled its mandatory carriage obligations. If the FCC ultimately adopts this position, the Commission should make clear that the requirement to carry the closest local affiliate extends to situations where a station relies on signals carried pursuant to retransmission consent to meet its must carry obligations.

entitled to mandatory carriage, Congress required that a cable system carry the signal of the affiliate that was most "local."

For example, San Jose, California, is located in the San Francisco-Oakland-San Jose ADI. In addition to Station KNTV, licensed to San Jose, California, there are two other television stations in the San Francisco-Oakland-San Jose ADI that also are affiliates of the ABC Network -- Station KGO, licensed to San Francisco, California, and Station KFWU, licensed to Fort Bragg, California. Assuming that all three stations are entitled to mandatory carriage on cable systems serving San Jose,^{19/} under Section 614(b)(2) of the 1992 Act, a cable system serving San Jose that did not have sufficient channel capacity to carry all "local" signals would have the discretion not to carry any of the three ABC affiliates. If, however, such cable system elected to carry an ABC affiliate, it would be required to carry the signal of Station KNTV because the station is located closest to the cable system's principal headend.

The Senate Report makes clear that consistent with its desire to promote localism, the purpose for requiring a cable system to carry the signal of the closest station, was to require that a cable system carry the most "local" signal because that station would be the most likely to provide programming

^{19/} As set forth in Section II of these Comments, because Arbitron has assigned KNTV to the Salinas-Monterey ADI, KNTV may be in the anomalous situation of not being classified as a local station in San Jose for must carry purposes. See *supra* at 5. This example assumes that the Station has must carry rights in San Jose.